

§ 52.56

33 CFR Ch. I (7–1–08 Edition)

§ 52.56 Conduct of hearing.

(a) The Chair or the Chair's designee shall conduct a hearing so as to ensure a full and fair presentation of the evidence.

(b) The hearing is not limited by legal rules of evidence, but reasonable standards of competency, relevancy, and materiality are observed for the receipt and consideration of evidence.

(c) All testimony shall be given under oath or affirmation.

§ 52.57 Record of hearing.

A hearing pursuant to this subpart in open session shall be recorded verbatim and, at the discretion of the Board or direction of the Secretary, shall be transcribed.

Subpart G—Judgment and Disposition

§ 52.61 Deliberations and decision.

(a) The Board is convened at the call of the Chair and its meetings are recessed or adjourned by order of the Chair. Only members of the Board and its staff may be present during the deliberations of the Board. The Board's deliberations are conducted in executive session and are not reported.

(b) When the Board finds that the facts have not been fully and fairly disclosed by the records, testimony, and any other evidence before the Board, the Board may request the applicant and/or the Coast Guard to obtain and submit such further evidence as it considers essential to a complete and impartial understanding of the facts and issues.

(c) Following the receipt of all evidence, the Chair shall cause to be prepared and shall submit to the Board for its consideration a draft decision containing proposed findings and conclusions and a proposed order. A majority vote of the members of the Board present at a meeting on any matter relating to a draft decision before the Board shall constitute the action of the Board. If a draft decision is approved by the Board, it shall become a decision of the Board.

(d) The decision of the Board shall specify any change, correction, or modification of records to be made by

the Coast Guard, and any other action deemed necessary to provide full and effective relief, which may include directing the Coast Guard to convene medical boards.

(e) If the Board deems it necessary to submit a comment or recommendation to the Secretary as to a matter arising from, but not directly related to, the issues in a case, it does so by separate communication.

§ 52.62 Minority report.

In case of disagreement among Board members, a minority report may be submitted dissenting from or concurring with the decision of the Board.

§ 52.63 Record of proceedings.

(a) The Board shall prepare a complete record of each proceeding. The record shall include the application for relief; the written views of the Coast Guard, if any; any transcript of testimony; affidavits and documents considered by the Board; briefs and written arguments filed in the case; the findings, decisions, and recommendations of the Board; minority reports, if any; and all other materials necessary to reflect a true and complete history of the proceedings.

(b) After final action has been taken on an application in accordance with § 52.64, any classified, privileged, or sensitive information in the record of proceedings that has been provided by the Coast Guard or another Government office in accordance with §§ 52.42 or 52.43 shall be returned by the Board to the office from which it was received. Only a copy of the information provided by the Coast Guard or other Government office for release to the applicant in accordance with § 52.43(c) shall be retained in the permanent record of proceedings after final action is taken.

§ 52.64 Final action.

(a) The Board, provided that it acts unanimously, may take final action on behalf of the Secretary, pursuant to 10 U.S.C. 1552, as follows:

(1) The Board may deny an application for the correction of military records.

(2) Unless the Coast Guard, in submitting its views pursuant to § 52.42(b), identifies and describes a significant

issue of Coast Guard policy challenged in the application, the Board may approve an application for the correction of military records in any of the following categories:

- (i) An application to correct an enlistment or reenlistment contract or agreement to extend an enlistment for the purpose of effecting or increasing entitlement to a Selective Reenlistment Bonus;
- (ii) An application to modify an election to participate in the Survivor Benefit Plan;
- (iii) An application to change a reenlistment eligibility code;
- (iv) An application to correct the character of, or reason for, a discharge or separation; or
- (v) An application to receive a medal or award.

(3) The Board may approve any application for correction of military records not included in one of the categories in paragraph (a)(2) of this section, if the Coast Guard recommends the same or substantially same relief as that requested by the applicant.

(b) Except in cases where the Board takes final action under paragraph (a) of this section, the Board shall forward the record of its proceedings to the Secretary, who may approve, disapprove, or concur in the decision of the Board or the minority report, if any, either in whole or in part, and amend the order of the Board accordingly, or return the case to the Board for additional consideration. After taking final action, the Secretary shall send any such statement and the record of proceedings to the Board for disposition.

§ 52.65 Orders.

(a) The Board shall issue such orders or directives as may be necessary to carry out a final action.

(b) The Board may ask the Coast Guard to submit a written report to the Board specifying the action taken and the date thereof with respect to any final action.

(c) Unless doing so is likely to nullify the relief granted, copies of the final decision shall be placed in the military record of the applicant.

§ 52.66 Notification.

After final action is taken under § 52.64, the Board shall send a copy of the final decision to the applicant. The applicant may inspect the permanent record of proceedings at Board offices.

§ 52.67 Reconsideration.

(a) Reconsideration of an application for correction of a military record shall occur if an applicant requests it and the request meets the requirements set forth in paragraph (a)(1) or (a)(2) of this section.

(1) An applicant presents evidence or information that was not previously considered by the Board and that could result in a determination other than that originally made. Such new evidence or information may only be considered if it could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence; or

(2) An applicant presents evidence or information that the Board, or the Secretary as the case may be, committed legal or factual error in the original determination that could have resulted in a determination other than that originally made.

(b) The Chair shall docket a request for reconsideration of a final decision if it meets the requirements of paragraph (a)(1) or (a)(2) of this section. If neither of these requirements is met, the Chair shall not docket such request.

(c) The Board shall consider each application for reconsideration that has been docketed. None of the Board members who served on the Board that considered an applicant's original application for correction shall serve on the Board that decides the applicant's application upon reconsideration.

(d) Action by the Board on a docketed application for reconsideration is subject to §§ 52.26 and 52.64(b).

(e) An applicant's request for reconsideration must be filed within two years after the issuance of a final decision, except as otherwise required by law. If the Chair docketed an applicant's request for reconsideration, the two-year requirement may be waived if the Board finds that it would be in the interest of justice to consider the request despite its untimeliness.